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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Appln. of: Zander et al.

Appln. No.: 10/749,871

Filed: December 30, 2003

For: Visually Coordinated Absorbent
Product

Attorney Docket No: 659-2080

Client Ref. No.: 19996

Examiner: Gibson, Keshia L.

Art Unit: 3761

Mail Stop Appeal Brief - Patents
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL

Sir:

Attached is/are:

- ☒ Appellants' Second Reply Brief; and
☒ Return Receipt Postcard.

Fee calculation:

- ☒ No additional fee is required.
☐ Small Entity.
☐ An extension fee in an amount of \$_____ for a _____-month extension of time under 37 CFR § 1.136(a).
☐ A petition or processing fee in an amount of \$_____ under 37 CFR § 1.17(____).
☐ An additional filing fee has been calculated as shown below:

					Small Entity			Not a Small Entity	
	Claims Remaining After Amendment		Highest No. Previously Paid For	Present Extra	Rate	Add'l Fee	or	Rate	Add'l Fee
Total		Minus			x \$25=			x \$50=	
Indep.		Minus			X105=			x \$210=	
First Presentation of Multiple Dep. Claim					+\$185=			+ \$370=	
					Total	\$		Total	\$

Fee payment:

- ☐ A check in the amount of \$_____ is enclosed.
☐ Please charge Deposit Account No. 23-1925 in the amount of \$_____. A copy of this Transmittal is enclosed for this purpose.
☐ Payment by credit card in the amount of \$_____ (Form PTO-2038 is attached).
☒ The Director is hereby authorized to charge payment of any additional filing fees required under 37 CFR § 1.16 and any patent application processing fees under 37 CFR § 1.17 associated with this paper (including any extension fee required to ensure that this paper is timely filed), or to credit any overpayment, to Deposit Account No. 23-1925. A copy of this Transmittal is enclosed for this purpose.

Respectfully submitted,

Andrew D. Stover (Reg. No. 387,629)

December 17, 2007

Date

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NBC Tower – Suite 3600, 455 N. Cityfront Plaza Drive, Chicago, IL 60611-5599

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Our Case No. 659/2080
K-C Ref. No. 19,996

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Zander, et al.

Serial No.: 10/749,871

Filing Date: December 30, 2003

For: VISUALLY COORDINATED
ABSORBENT PRODUCT

Examiner: Hand, Melanie Jo

Group Art Unit No.: 3761

APPELLANTS' SECOND REPLY BRIEF

MS APPEAL BRIEF - PATENTS
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Pursuant to 37 CFR 41.43(b), and in response to a supplemental Examiner's Answer mailed October 17, 2007, Applicants respectfully request entry of the present Second Reply Brief.

INTRODUCTION

The Examiner's Answer mailed July 2, 2007 included a new ground of rejection of claim 22. In particular, the Examiner rejected claim 22 under 35 U.S.C. 103 as being made obvious over U.S. Patent Application Publication No. US 2002/0148749 to Briseboi, rather than under 35 U.S.C. 102 as being anticipated by Briseboi, as previously asserted. Pursuant to 37 C.F.R. 41.39 (b)(2), Applicants previously requested that the Appeal be maintained, and substantively responded to the new rejection (*see* Reply Brief filed August 30, 2007). In response, the Examiner has filed a supplemental Answer, wherein the Examiner has provided an additional response to Applicants' arguments about claim 22 (*see* Supplemental Answer at 15).

Pursuant to 37 C.F.R. 41.43(b), Applicants have filed this Second Reply Brief in order to address the additional arguments made by the Examiner about claim 22. Applicants previously addressed the other arguments made by the Examiner in Applicants' main Brief filed February 7, 2007, and in Applicants' first Reply Brief filed August 30, 2007. Accordingly, Applicants will refrain from repeating those arguments here.

ARGUMENT

Claim 22 is Not Obvious over U.S. Patent Application Publication No. US 2002/0148749 to Briseboi

For the first time, the Examiner now asserts that Briseboi discloses a wrapper having a first visual characteristic, presumably visual reference system 604, and a fastening element 722 having a second visual characteristic (presumably reminder tag 723) (Supplemental Answer at 15, referring to FIG. 6). At the outset, Applicants note that, contrary to the Examiner's assertion, *FIG. 6* of Briseboi does *not* show "two pouches" (Supplemental

Answer at 15). Rather, FIG. 6 of Briseboi discloses one pouch (Briseboi at para. 41), and FIG. 7, on the same sheet of drawings (4/6), shows a “further variant of the embodiment of the invention illustrated in FIG. 3” (Briseboi at para. 45). In essence, FIGS. 6 and 7 of Briseboi teach alternative embodiments of the invention, rather than a combination thereof.

Specifically, the embodiment of FIG. 6 of Briseboi provides a visual reference system conveying information about the geometrical configuration of the napkin 610 (Briseboi at para. 41), while the reminder tag 723 of the FIG. 7 embodiment conveys information about the liquid absorption capacities (Briseboi at para. 45). This is no different than the embodiments of FIGS. 3-5, which provide the same or other information about the product.

Simply put, however, there is no suggestion, motivation, or any other reason that one of ordinary skill in the art would combine the embodiments of FIGS. 6 and 7 of Briseboi on the same product. Indeed, when withdrawing the prior rejection under 35 U.S.C. 102, the Examiner expressly acknowledged this lack of teaching, stating that:

Briseboi teaches that either the wrapper element of pouch 3 (FIG. 3) or said fastening element 722 (Fig. 7) provides both said first and second characteristics and therefore *does not teach* that the first packaging component has a wrapper element with a first visual characteristic (e.g., 106 or 108) and that the fastening element has said second visual characteristic” (July 2, 2007 Answer at 4; October 17, Answer at 5 (emphasis added)).

In essence, FIG. 7 merely provides an *alternative* configuration for communicating the visual reference system 704 (Briseboi at para. 45), rather than an *additional* configuration to be used with the embodiment of FIG. 6 on the same product component. One of ordinary skill in the art would not be led to provide separate systems on the same product component, which would require two separate labels and two separate application steps during

manufacture, thereby increasing the cost and complexity of the system and device with no apparent advantage.

Moreover, Briseboi discloses that the indicia are provided on the substrate 722, such that it can be peeled off to form a reminder tag 723 (Briseboi at para. 47). The consumer then compares the reminder tag 723 with a receptacle 102 at the store, such that the consumer can “easily identify the type of sanitary napkin the user normally purchases, without the need of remembering the details such as the particular brand, absorption characteristics, configuration, materials used in the construction of the sanitary napkin, etc.” (Briseboi at para. 48). As such, Briseboi teaches the importance of maintaining the information on the reminder tag 723, rather than on a wrapper 310, which is discarded by the consumer. As such, there is no reason for one of ordinary skill in the art to modify Briseboi to separate the information between separate labels, one on the substrate 722 and the other on the pouch 310.

Indeed, Briseboi expressly teaches one of ordinary skill in the art that additional icons, such as the geometrical configuration of system 604 (Briseboi at FIG. 6), would be included *on the same substrate* 722 of FIG. 7, which would save manufacturing costs *and* maximize the information available to the consumer at the retail location (Briseboi at para. 48). In particular, Briseboi states that the reminder tag 723 “system permits to easily identify the type of sanitary napkin the user normally purchases, without the need of remembering details such as the particular brand, absorption characteristics, *configuration*, materials used in the construction of the sanitary napkin, etc” (Briseboi at para. 48) (emphasis added). In summary, while Briseboi discloses alternatively securing visual reference systems to the

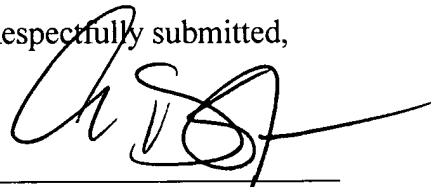
pouch or using the system as a fastener, Briseboi teaches against using such systems in combination on the same product component, and one of ordinary skill in the art would not be motivated or find it obvious to try such a combination.

For at least these reasons, the Examiner's rejection of claim 22 should be withdrawn.

CONCLUSION:

In summary, the cited references do not make obvious the inventions defined by the present claims. Accordingly, Appellants submit that the present inventions are fully patentable over the cited references, and the Examiner's rejections should be REVERSED.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'A. Stover', written over a horizontal line.

Andrew D. Stover
Registration No. 38,629
Attorney for Appellant

BRINKS HOFER GILSON & LIONE
P.O. BOX 10395
CHICAGO, ILLINOIS 60610
(312) 321-4200